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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS JESUS RAMIREZ,

Defendant and Appellant.

H034109

(Santa Clara County

Super. Ct. No. CC788731)

Instead of filing a *Wende*<sup>1</sup> brief, defendant Carlos Jesus Ramirez argues to this court that the victim of his crime, who was stabbed and hospitalized, is not entitled to \$40 in restitution for a sweatshirt and a belt that were not damaged during the crime, but no longer fit the victim because he lost weight while in the hospital. We find this challenge to be devoid of merit and we affirm.

**BACKGROUND**

Defendant was convicted by plea of multiple felony counts, including one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))<sup>2</sup> resulting from a fight that

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<sup>1</sup> *People v. Wende* (1979) 25 Cal.3d 436.

<sup>2</sup> All further unspecified statutory references are to the Penal Code.

occurred at a restaurant in San Jose. Charles Chaparro, a patron at the restaurant, was stabbed by defendant in the left upper leg/groin area. Chaparro spent five days in the hospital. At sentencing, Chaparro submitted a written and signed statement of loss, claiming \$130 in victim restitution for the clothes and shoes he was wearing when stabbed. In the statement of loss, he claimed \$50 for shoes and socks that were “missing/lost” by the police, \$40 for pants and underwear that were “ruined due to blood,” and \$40 for the sweatshirt and belt that were returned to him undamaged. Chaparro stated that he was not able to wear any of the clothing that was returned to him because he had lost 15 pounds while in the hospital and the clothes no longer fit. Defendant objected to restitution for the sweatshirt and the belt arguing that the fact they were undamaged but no longer fit was not “just cause to claim a restitution.” The trial court overruled the objection and ordered \$130 in restitution for the shoes and the clothing, stating “whether the police department had them, lost them, or whether they now no longer fit, the defendant’s actions are responsible for the deprivation of the victim of those items. . . .” Defendant challenges the restitution order to the extent that it includes \$40 for the sweatshirt and the belt.

## **DISCUSSION**

### ***Standard of Review***

The standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.) Generally speaking, restitution awards are vested in the trial court’s discretion and will be disturbed on appeal only where an abuse of discretion appears. (*People v. Fortune* (2005) 129 Cal.App.4th 790, 794.) “ ‘When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.’ ” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 499 (*Mearns*).)

## ***General Principles Governing Victim Restitution***

Proposition 8, known as the Victims' Bill of Rights, was passed in 1982. It established the right of crime victims to receive restitution directly from persons convicted of crimes. (*People v. Giordano* (2007) 42 Cal.4th 644, 652.) Proposition 8 added article I, section 28 to the California Constitution, which provides in subdivision (b)(13): "(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. [¶] (B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss."

To implement Proposition 8, the Legislature enacted section 1202.4. Under section 1202.4, the court must order direct victim restitution in "every case in which a victim has suffered economic loss as a result of the defendant's conduct." (§ 1202.4, subd. (f); see also § 1202.4, subd. (a)(1).) The court "shall require" the defendant to make restitution "based on the amount of loss claimed by the victim . . . or any other showing to the court. . . . The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states them on the record." (§ 1202.4, subd. (f).)

Section 1202.4, subdivision (f)(3) provides that "[t]o the extent possible, the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including but not limited to" 11 categories of losses listed in the statute. The value of damaged property is on that list. (§ 1202.4, subd. (f)(3)(A).) The statutory list of economic losses that may be recovered as victim restitution is not exclusive. (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 994.) In determining whether a particular loss is covered by the statute, a "victim's right to restitution is to be

broadly and liberally construed.” (*Mearns, supra*, 97 Cal.App.4th at p. 500.) Loss of use is an “economic loss” under the restitution statute. (*Thygesen, supra*, at p. 995.)

The victim’s statement about the value of damaged property, without supporting documentation, is prima facie evidence of the value of the property for the purpose of restitution. (*People v. Prosser* (2007) 157 Cal.App.4th 682, 690.) Absent a challenge by the defendant, an award of the amount claimed by the victim is not an abuse of discretion. (*People v. Pinedo* (1998) 60 Cal.App.4th 1403, 1406-1407.)

### ***Analysis***

Defendant argues that Chaparro was not entitled to restitution for the sweatshirt or the belt for three reasons: (1) they were not “stolen, damaged or lost” within the meaning of the statute; (2) the items at issue still had economic value and their value was not as claimed; and (3) defendant’s criminal conduct was not the cause of the loss. We are not persuaded by any of these arguments. After the stabbing, the sweatshirt and belt were of no use to Chaparro because he had lost weight due to injuries he sustained when stabbed. As explained above, Chaparro’s statement about the value of these items was prima facie evidence of their value for the purpose of restitution (*People v. Prosser, supra*, 157 Cal.App.4th at p. 690) and defendant presented no evidence challenging the amount claimed. In the trial court, defendant did not challenge Chaparro’s claim that the loss of use of the clothing was due to the stabbing.

The trial court’s restitution award was rational, based on evidence presented in the probation report, and within its broad discretion. We therefore conclude that the trial court did not abuse its discretion in awarding the value of the sweatshirt and belt as victim restitution to Chaparro.

**DISPOSITION**

The judgment is affirmed.

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McAdams, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Duffy, J.